TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00258-CV

Railroad Commission of Texas and Magnolia Oil & Gas Operating LLC, Appellants

v.

Elsie Opiela and Adrian Opiela, Jr., Appellees

FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-20-000099, THE HONORABLE KARIN CRUMP, JUDGE PRESIDING

D I S S E N T I N G O P I N I O N

The majority concludes that there was not substantial evidence supporting the Commission's finding that Magnolia "has PSAs with at least 65% of all mineral interest owners and working interest owners for each of the tracts traversed by the Well" and, in turn, the Commission's conclusion that "Magnolia has a good faith claim to operate the Well." In doing so, the majority assumes that the 65% threshold standard applied by the Commission is not an improperly adopted rule, as the Opielas contend. Because I disagree that the evidence is insufficient to support the Commission's finding that Magnolia has satisfied the 65% threshold, I respectfully dissent from that portion of the opinion.

The majority's decision rests on the distinction between an agreement to share production and an agreement to allow pooling. In essence, the majority concludes that pooling agreements would not be applicable to the proposed multi-tract horizontal well and thus there is no evidence of a production sharing agreement as to interest owners who signed pooling agreements.

I do not disagree that formally pooling leases into a pooled unit is different than an agreement between interest owners as to how production is shared from a horizontal well. That does not mean, however, that an interest owner who agrees that his lease may be "pooled," such that production from one tract is treated as production from all tracts, has not agreed as to how to share production from a horizontal well.[1]

I would conclude that an operator's certification that at least 65% of the mineral and working interest owners from each tract have agreed as to how production will be shared from a horizontal well, when supported by signed agreements in the record, is sufficient to show a good-faith claim to operate the proposed well. Because royalty calculations are specific to each lease and subject to negotiation, the exact shares or method for dividing proceeds from production (such as by surface acreage or in proportion to the length of the well that traverses the land) under any particular agreement is immaterial. Agreeing to share production differently with some interest owners simply means the operator may end up paying a larger royalty share than if the agreements had been uniform. In addition, this approach—considering only whether an agreement to share production exists, without regard to its specific terms—is consistent with Texas Supreme Court directive that the Commission should not be in the business of interpreting lease rights. *See Magnolia Petroleum Co. v. Railroad Comm'n*, 170 S.W.2d 189, 191 (Tex. 1943).

Here, the Commission found that "65.625% of the mineral interest owners signed either a PSA, consent to pool or ratification of unit, all setting forth a method of dividing proceeds" and that "[a]ll of the written agreements relied on by Magnolia as PSAs, contain an agreement as

[1] I note that one ground raised by the Opielas to challenge the permit is that their lease lacks a pooling agreement.

to how proceeds will be divided." I would conclude that these unchallenged findings are sufficient to support the Commission's conclusion as to Magnolia's good faith claim to drill the well. I would then resolve the issue of whether the Commission's 65% threshold standard complies with the APA. Because the majority does neither, I dissent.

_____

Chari L. Kelly, Justice

Before Chief Justice Byrne, Justices Kelly and Smith

Filed: June 30, 2023